

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5258 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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JAGDISHBHAI HIRABHAI PATEL

Versus

STATE OF GUJARAT  
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Appearance:

MR AJ PATEL for Petitioners

Mr.H.L.Jani A.G.P. for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/08/1999

ORAL JUDGEMENT(Per:Panchal.J)

Rule:

#. Mr. H.L.Jani learned A.G.P. waives service of

notice of Rule on behalf of the respondents.

#. At the request of the learned advocates for the parties, this petition is taken up for final hearing today.

#. By means of filing this petition under Article 226 of the Constitution the petitioners have prayed to issue a writ of mandamus or any other appropriate writ order or direction to quash and set aside the decision contained in the communication produced at Annexure.H to the petition and to direct the respondents to pay the amount of compensation to the petitioners as per the consent award at Annexure G to the petition. The petitioners have also prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to pay damages to the petitioners for the delay caused in paying the amount of compensation and for the crops taken away by the respondents from the lands under acquisition.

#. The petitioners were owning the agricultural lands situated in village Sim-Amli, Taluka Sagbara, District Narmada. The particulars of lands which were owned by the petitioners are given in para 2 of the petition. The above referred to lands were acquired pursuant to the publication of preliminary Notification under section 4(1) of the Land Acquisition Act 1894 (hereinafter referred to as the said Act) in the Government Gazette on January 21, 1995. According to the petitioners they entered into an agreement with a view to have a consent award as contemplated by the provisions of section 11(2) of the said Act. A copy of the agreement is produced by the petitioner at Annexure A to the petition. The petitioners have claimed that possession of the above referred to lands was taken by the respondent but compensation was not paid to them. According to the petitioners even value of the standing crops was also assessed by the District Agriculture Officer, Broach but no compensation was paid to them. The petitioners have averred that after long delay, the Special Land Acquisition Officer made a so called consent award on August 9, 1996 without issuing notice to the petitioners or hearing them but did not make payment of compensation to them. A copy of the said award is produced by the petitioner at Annexure.G to the petition. The grievance made by the petitioners in the present petition is that though long time has elapsed, compensation has not been paid to the petitioners. Under the circumstances, the petitioners have filed the present petition and claimed relief to which reference is made earlier.

#. On notice being served, Mr. M.M.Makwana, Assistant Commissioner, Rehabilitation Unit IV, Sardar Sarovar Punarvasvat Agency, Vadodara has filed affidavit in reply controverting the averments made in the petition. What is asserted in the reply is that the petitioners have not handed over possession of the aforesaid lands and therefore, they are not entitled to the reliefs claimed in the petition.

Heard the learned advocates for the parties.

#. The fact that the lands belonging to the petitioners have been acquired pursuant to the publication of Notification under section 4(1) of the Act in the Gazette on January 21,1995 is not in dispute. It is also not in dispute that the petitioners have not been paid compensation till this date. Though the petitioners had executed an agreement with a view to enabling the Special Land Acquisition Officer to make a consent award, no steps were taken by the Special Land Acquisition Officer to make appropriate award and ultimately so called consent award was passed without hearing the petitioners. It hardly needs to be emphasised that the consent award is not accepted by the present petitioners. Having regard to the facts and circumstances of the case, we are of the opinion that interest of justice would be served if the Special Land Acquisition Officer, Narmada Project Unit 4, Narmada Administrative Complex, Baroda is directed to make the award under section 11 of the said Act after giving notices to the claimants and hearing them.

#. For the foregoing reasons the petition partly succeeds. The respondent no.3, the Special Land Acquisition Officer, Narmada Project No.4, Narmada Administrative Complex, Baroda is directed to make the award under section 11 of the Land Acquisition Act 1894 after issuing notices to the petitioners and hearing them. Respondent no.3 shall make an award in accordance with law as early as possible and preferably within four months from today. After the award is made it would be open to the Special Land Acquisition Officer to take possession of the lands aforesaid in accordance with law.

Rule is made absolutely accordingly with no order as to costs.

